

ESTTA Tracking number: **ESTTA371594**

Filing date: **10/04/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Gruma Corporation
Granted to Date of previous extension	10/03/2010
Address	1159 Cottonwood Lane Suite 200 Irving, TX 75038 UNITED STATES
Attorney information	John M. Cone Hitchcock Evert LLP PO Box 131709 Dallas, TX 75313-1709 UNITED STATES jcone@hitchcockevert.com, docket@hitchcockevert.com, ksimpson@hitchcockevert.com Phone: 214 880 7002

### Applicant Information

Application No	77734156	Publication date	04/06/2010
Opposition Filing Date	10/04/2010	Opposition Period Ends	10/03/2010
Applicant	OlÃ© Mexican Foods, Inc. 6585 Crescent Drive Norcross, GA 30071 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Tortillas; Tostadas
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2534248	Application Date	07/09/2001
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	LA MONITA		

Design Mark	LA MONITA
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00 tortillas [ and masa ]

U.S. Registration No.	3306372	Application Date	02/28/2007
Registration Date	10/09/2007	Foreign Priority Date	NONE
Word Mark	LA MONITA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00 tortillas		

U.S. Registration No.	3618991	Application Date	09/26/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE
Word Mark	LA MONITA		
Design Mark	LA MONITA		
Description of	NONE		

Mark	
Goods/Services	Class 030. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00 masa (corn dough)

Attachments	76282768#TMSN.gif ( 1 page )( bytes ) 77118006#TMSN.jpeg ( 1 page )( bytes ) 77579862#TMSN.jpeg ( 1 page )( bytes ) 100929 Notice of Opposition[Gruma].pdf ( 3 pages )(20487 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ John M. Cone
Name	John M. Cone
Date	10/04/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Application Serial No. 77/734,156 LA MORENITA**

<hr/> <b>GRUMA CORPORATION,</b>	§	
	§	
<b>Opposer,</b>	§	
	§	
<b>v.</b>	§	<b>Opposition No. _____</b>
	§	
<b>OLÉ MEXICAN FOODS, INC.,</b>	§	
	§	
<b>Applicant.</b>	§	

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TO THE HONORABLE TRADEMARK TRIAL AND APPEAL BOARD

**NOTICE OF OPPOSITION**

1. Gruma Corporation ("Gruma") is the owner of the trademark LA MONITA used in the U.S. for tortillas and masa since at least as early as 1950.
2. Gruma owns the following registrations of the mark LA MONITA for these products:

Reg. No. 2534248	LA MONITA	Tortillas
Reg. No. 3306372	LA MONITA and Design	Tortillas
Reg. No. 3618991	LA MONITA	Masa (corn dough)
3. Each of the registrations identified in Paragraph 2 constitutes prima facie evidence of the validity of the registered mark, and of the registration of the mark, and of Gruma's exclusive right to use the registered mark in commerce on the goods of the registration and is constructive notice of Gruma's ownership of the mark.
4. In addition, Gruma's right to use the mark of Registration No. 2,534,248 has become incontestable under 15 U.S.C. § 1065 and in conclusive evidence of the validity of the registration, of the registration of the mark, of

Gruma's ownership of the mark and of Gruma's exclusive right to use the registered mark in commerce for the goods of the registration.

5. Gruma's rights in the mark LA MONITA were established long before the priority date of Applicant's mark LA MORENITA. The mark applied for, LA MORENITA, so resembles Gruma's mark LA MONITA that it has used in the United States and which is the subject of the registrations listed in Paragraph 2, that use of LA MORENITA for the goods identified in application S.N. 77/734,156, would be likely to cause confusion, or to cause mistake or to deceive. 15 U.S.C. § 1052(d).

6. For the reasons set out above, Gruma is being damaged because application S.N. 77/734,156, if granted, would create statutory rights in violation of Gruma's established rights.

WHEREFORE, Gruma prays that judgment be entered refusing application S.N. 77/734,156 and for such other and further relief that the Board finds just and proper.

Dated: October 4, 2010

Respectfully submitted,

/s/ John M. Cone  
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ATTORNEY FOR OPPOSER  
GRUMA CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of October 2010, a true and correct copy of the foregoing document was served via U.S. First Class Mail, postage prepaid on:

Paul S. Owens  
Paul Owens & Associates  
PO Box 15310  
Atlanta GA 30333-0310

/s/ John M. Cone  
John M. Cone